

GUAM FOREIGN INVESTMENT EQUITY ACT

APRIL 24, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 309]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 309) to provide for the determination of withholding tax rates under the Guam income tax, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 309 is to provide for the determination of withholding tax rates under the Guam income tax.

BACKGROUND AND NEED FOR LEGISLATION

Under the U.S. Internal Revenue Code, there is a standard 30% State income tax rate for foreign investors in the United States. Since Guam's territorial tax law mirrors the rate established under the U.S. Code, the territorial income tax rate for foreign investors in Guam is 30%.

It is a common feature of tax treaties negotiated by the U.S. to provide for lower tax rates on investment income for the other countries' investors. Unfortunately, Guam is not included in any of these treaty definitions as being part of the "United States." Such omissions have adversely impacted Guam since 75% of Guam's commercial development is funded by foreign investors. As an example, under a treaty with Japan, the rate at which states may tax Japanese investors is 10%. That means while a Japanese investor's income would be taxed at a rate of 10% in any of the fifty states, that same investor's income would be taxed at a rate of 30% in Guam.

In the 106th Congress, the House passed almost identical language to H.R. 309 in Section 3 of the Guam Omnibus Opportunities Act (H.R. 2462). However, while under consideration by the Senate, the Treasury Department raised concerns that the provision would allow foreign investors who benefit from Section 3 to simultaneously benefit from other tax rebates under Guam territorial law. H.R. 309 reflects language which addresses this concern.

H.R. 309 amends the Organic Act of Guam to provide the government of Guam with the authority to tax foreign investors at the same rates as states under U.S. tax treaties with foreign nations since Guam cannot change the withholding tax rate on its own under current law. The Committee finds that the imposition of the withholding tax of 30% on foreign investors reflected in the U.S. “mirror- image” tax system of the government of Guam hampers the island’s ability to expand its economy. The Committee notes that if U.S. treaties included U.S. insular areas in defining the United States in future negotiated treaties then Guam would be able to benefit from other economic opportunities afforded to the 50 states.

COMMITTEE ACTION

H.R. 309 was introduced on January 30, 2001, by Congressman Robert A. Underwood (D-GU). The bill was referred to the Committee on Resources. On March 28, 2001, the Full Resources Committee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources’ oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of Rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 30, 2001.

Hon. JAMES V. HANSEN,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 309, the Guam Foreign Investment Equity Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBS staff contacts are John R. Righter (for federal costs) and Marjorie Miller (for the state and local impact).

Sincerely,

BARRY B. ANDERSON
(For Dan. Crippen, Director).

Enclosure.

H.R. 309—Guam Foreign Investment Equity Act

H.R. 309 would amend the Organic Act of Guam to require the government of Guam to tax the earnings of foreign investors at the same rates as those applied by the 50 states under U.S. tax treaties with foreign countries. Because the bill would not affect federal tax rates, CBO estimates that implementing H.R. 309 would have no impact on the federal budget. Because the bill would not affect direct spending or governmental receipts, pay-as-you-go procedures would not apply.

H.R. 309 contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act. The bill would change the tax rate applied to income earned by foreign (i.e., non-U.S. and non-Guamanian) investors under the Guam territorial income tax. This change would allow income earned in Guam by foreign investors to be taxed at the same rates as would apply to such income earned in the 50 states—rates established by tax treaties with foreign countries. In the short term, this change would result in decreased revenues from the Guam territorial income tax. In the long term, however, those losses could be offset to the extent that increased foreign investment in the territory generates increased tax revenues.

Enactment of this legislation would have no significant impact on the budgets of other state, local, or tribal governments.

The CBO staff contacts are John R. Righter (for federal costs) and Majorie Miller (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

COMMITTEE CORRESPONDENCE

AGANA, GUAM, *April 4, 2001.*

Hon. JAMES V. HANSEN,
Chairman, Committee on Resources,
Washington, DC.

DEAR CHAIRMAN HANSEN: I am writing in support of H.R. 309, the Guam Foreign Investment Equity Act, which is scheduled for committee markup on March 28 in the Committee on Resources. This bill is supported by the Guam Chamber of Commerce and it is a priority of my administration for Guam's economic recovery.

The Guam Foreign Investment Equity Act would remove a disparity that now exists wherein foreign investors may receive more favorable tax treatment by investing in all fifty states and all the other U.S. territories. Guam alone is unable to offer the same tax withholding benefits that every state and territory are afforded when a tax treaty is implemented between the United States and a foreign government. H.R. 309 would amend the Organic Act of Guam to establish lower withholding tax rates for foreign investors on Guam so that this disparity is eliminated. We would no longer be at a disadvantage in attracting foreign investments to our island and we hope to be able to increase the investments in our tourism infrastructure in the years to come to create new jobs.

With our current unemployment rate of 15% and a slowly recovering economy (Guam is literally in Asia), H.R. 309 would be a new tax incentive that we hope will result in new interest in Guam. We had worked with Congressman Underwood and the previous administration to craft the compromise language that is incorporated in H.R. 309, and we support the bill as it is now written. Thank you for placing H.R. 309 on the markup calendar for March 28. I hope that the Committee on Resources will recommend H.R. 309 to the House for passage on the floor.

Sincerely,

CARL T.C. GUTIERREZ,
Governor of Guam.

GUAM CHAMBER OF COMMERCE,
Guam, March 23, 2001.

Hon. JAMES V. HANSEN,
Chairman, Committee on Resources, House of Representatives,
Washington, DC.

DEAR MR. CHAIRMAN: The Guam Chamber of Commerce is seeking your vote in support of enactment of the Guam Foreign Investment Equity Act, H.R. 309, introduced by our Washington Delegate, Congressman Robert A. Underwood.

The Guam Foreign Investment Equity Act will provide Americans in Guam with the same tax advantages long enjoyed by other

Americans in our United States. It is also essential to the recovery of our island economy.

The weakened Asian economies continue to weigh on Guam's tourism industry, as prospective projects have become too marginal given the effect withholding taxes have on projected returns. Consequently, many long established businesses in Guam owned by foreign investors have closed or will be closing soon. Investment capital from Asian countries have funded more than three-fourths of the commercial development on our island. Your vote for enactment of the Guam Foreign Investment Equity Act will be responsible to our need for immediate relief for it will address our major problem of an extremely high rate of withholding tax on diminishing profits as well as debt repayment.

We are America in Asia, the closest U.S. destination to America's major trading partners in Asia, key markets for Guam's tourism industry, our largest industry. H.R. 309 is critical to Guam's future development for it will expand our financial relationship with countries supportive of development opportunities on our island.

The Guam Chamber of Commerce has served the Guam community for 77 years. Our membership manages sales volumes in excess of \$2 billion that equates to 70% of Guam's Gross Island Product. We represent all sectors of Guam's business community, with small micro-businesses as our largest component totaling 48% of member companies. We are a member of the U.S. Chamber of Commerce and the Asia-Pacific Council of American Chambers of Commerce.

A resolution adopted by the Board of directors stating our full support of the Guam Foreign Investment Equity Act is enclosed for your consideration.

Sincerely,

THOMAS P. MICHELS,
Chairman of the Board.
ELOISE R. BAZA,
President.

Enclosure.

RESOLUTION ON THE GUAM FOREIGN INVESTMENT EQUITY ACT
ADOPTED BY THE BOARD OF DIRECTORS, GUAM CHAMBER OF COMMERCE

Whereas, since the inception of civil government in 1950 the people of Guam has struggled with the "mirror image" application of the Internal Revenue Code of the United States; and

Whereas, a significant barrier to foreign investment in Guam is the statutory 30% withholding tax rate on dividends, interest and other forms of passive income remitted to foreign investors from their investment projects in Guam, a rate which Guam has no authority to change; and

Whereas, Guam is at a serious disadvantage to other jurisdictions in the United States in attracting foreign investment because tax treaties between the United States and foreign nations intended to balance the effective corporate tax rates between trading countries, do not apply to Guam; Now therefore be it

Resolved, the Guam Chamber of Commerce recommends as essential to Guam's developing island economy, legislation permitting

Guam to apply the same withholding tax rates as if Guam were treated as part of the United States for purposes of the treaty obligations of the United States as proposed in the Guam Foreign Investment Equity Act; and be it further

Resolved, that the Guam Chamber of Commerce strongly endorses the enactment of the Guam Foreign Investment Equity Act introduced on January 30, 2001 as H.R. 309 by Delegate Robert A. Underwood (Guam).

Adopted by the Board of Directors on the 23rd day of March, 2001.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 31 OF THE ORGANIC ACT OF GUAM

SEC. 31. (a) The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam: *Provided*, That notwithstanding any other provision of law, the Legislature of Guam may levy a separate tax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the Government of Guam.

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(d)(1) * * *

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(3) *In applying as the Guam Territorial income tax the income-tax laws in force in Guam pursuant to subsection (a) of this section, the rate of tax under sections 871, 881, 884, 1441, 1442, 1443, 1445, and 1446 of the Internal Revenue Code of 1986 on any item of income from sources within Guam shall be the same as the rate which would apply with respect to such item were Guam treated as part of the United States for purposes of the treaty obligations of the United States. The preceding sentence shall not apply to determine the rate of tax on any item of income received from a Guam payor if, for any taxable year, the taxes of the Guam payor were rebated under Guam law. For purposes of this subsection, the term "Guam payor" means the person from whom the item of income would be deemed to be received for purposes of claiming treaty benefits were Guam treated as part of the United States.*

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